

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Bail Appl.No. 5107 of 2007(K)

CRIME 58/05 OF KARIKKOTTAKKARI POLICE STATION
CRL.M.C.183/06 OF COURT OF SESSIONS, THALASSERY
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PETITIONER : ACCUSED:

KOZHI AUTHA @ ARAKKAL JOSEPH,
S/O.JOSEPH, ARAKKAL HOUSE. AGED ABOUT 55 YEARS,
VANIYAPPARA, AYYANKUNNU AMSOM DESOM, KANNUR.

BY ADV. SRI.JIJI THOMAS PAMBACKAL

RESPONDENTS: COMPLAINANT AND STATE:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

B.A.No. 5107 of 2007

Dated this the 22nd day of August, 2007

ORDER

Application for anticipatory bail. The petitioner was allegedly found to be in possession of 4.5 litres of arrack on 8.10.2005. The petitioner was not arrested in the course of investigation. Investigation is now complete. Final report has already been filed. Cognizance has been taken. Committal proceedings has been registered. The petitioner apprehends arrest in execution of coercive processes issued by the learned Magistrate.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful, but was due to reasons beyond his control. The petitioner is willing to appear before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He therefore prays that directions under Section 438 and/or 482 Cr.P.C. may be issued in favour of the petitioner.

3. The learned Prosecutor opposes the application. He submits that the petitioner may be directed to appear before the Investigator or the learned Magistrate and then seek regular bail in the normal course.

4. I find merit in the opposition by the learned Prosecutor. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

5. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have

already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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